

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 879 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HAJI YUNUS HAJI ABDULLAH BACHAV

Versus

STATE OF GUJARAT

Appearance:

MR BP MUNSHI for Petitioner

MR DC DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 29/08/97

ORAL JUDGEMENT

Rule. Mr D.C.Dave, learned AGP, waives service of rule.

2. The petitioner is a proprietary firm holding a licence as a wholesale dealer under the provisions of Gujarat Essential Articles (Licensing Control and Stock Declaration) Order, 1981 (hereinafter referred to as the

Licensing Order). A copy of the licence has been placed on record. It appears from the licence that it was valid upto 31st December 1992. The shop of the petitioner was inspected on 11th January 1993 in which it was found that the licence was not renewed as on the date of inspection after the expiry of the licence period on 31.12.92 and therefore there was a breach of the provisions of clause 3 read with clause 5 of the Licensing Order. The respondent No.3 Mamlatdar and the Competent Authority seized the stock of paddy weighing 8046 k.g. worth Rs.50,943.60 ps. The respondent No.2, Deputy Collector Gondal, served a notice dated 6.2.93 upon the petitioner to show cause as to why the commodities seized be not confiscated. The petitioner submitted reply taking plea that clause 5(1) of the Licensing Order provides that a licence shall be valid for a period of five years and therefore it was valid upto 31st December, 1993. The petitioner also raised contentions on the basis of proviso 1 and 2 of rule 5(1). However, the respondent No.2 by order dated 15.2.93 ordered to forfeit the entire stock of paddy seized by the respondent No.3. The petitioner, then, preferred appeal against the said order to the State Government. In the opinion of the State Government, it was a technical breach and therefore, by order dated 1.1.96 partly allowed the appeal and ordered for confiscation of 50 per cent of the paddy seized worth Rs.25,471.80 ps.

3. It is contended by Mr Munshi, learned counsel for the petitioner that both the authorities below have failed to appreciate the contention raised by the petitioner on the basis of rule 5 of the Licensing Order. It is contended that the statutory period of licence as provided under the Licensing Order is 5 years. It is further submitted that the case of the petitioner is covered under first and second proviso to the rule. On the other hand, it is contended by the learned AGP that rule 5 only provides for outer limit of a life of licence and in the present case, the Licensing Authority has granted the licence for a period of 4 years. He has invited my attention to the licence which clearly provides that the licence is valid only upto 31st December, 1992. In view of this, it is submitted that on 11th January 1993 when the shop was inspected, the petitioner was not holding a valid licence. With respect to proviso first and second to rule 5, it is submitted that they are not attracted in the present case as the petitioner had not applied for renewal before the expiry of the valid period of licence

4. In order to appreciate the controversy, it would

be convenient to read relevant part of rule 5 of the Licencing Order, thus :

"5. Period of licence and fees chargeable --

- (1) Every licence granted under this Order shall be valid for a period of five years from the 1st January of the year in which it is issued and maybe renewed for a period of five years if an application for the renewal thereof is made within a period of its validity:

Provided that a licence issued after the 15th October of an year shall be valid upto the end of five years beginning from the next succeeding year:

Provided further that an application for renewal of a licence made before the end of February immediately following the date of expiry of the licence, may for sufficient reasons to be recorded in writing by the licensing authority be entertained by the licensing authority and the licence may be renewed.

- (2) When an application for renewal of a licence made either within the period of validity of the licence under sub-clause (1) or before the end of February under the second proviso to sub-clause (1) the licence holder shall be deemed to be duly licensed till the date on which the licensing authority either renews or refuses to renew the licence."

A reading of sub-clause (1) of rule 5 makes it clear that a statutory period of life of a licence is five years. The first proviso provides that if the licence has been issued after 15th October of a year, it shall be valid upto the end of five years beginning from the next succeeding year. Thus, applying the said proviso to the present case, as the licence was granted in November 1988, i.e. after 15th October, it shall be valid upto the end of 5 years beginning from the next succeeding year which will begin from 1st January 1989 and which will end in December 1993. The language of rule 5 is very clear and provides a statutory period of five years. No reason has come forth as to why the statutory period of 5 years has been curtailed in the present case. It appears that there has been some error in the Licencing Order when it is said that it is upto the period of 31st

December, 1992. If there was error on the part of the respondent authority, they cannot be permitted to have advantage of their wrong. Be that as it may. Even if it is assumed that the licence was valid upto 31st December, 1992, then again, the case of the petitioner will be covered under second proviso. The second proviso provides that if an application for renewal of licence is made before the end of February immediately following the date of expiry of the licence, the Licensing Authority may for sufficient reasons to be recorded in writing renew the licence. Sub clause (2) provides that the renewal has been under second proviso the licence holder shall be deemed to be duly licensed. It is not in dispute that just on the next day of inspection i.e. 12 the January, 1993, the petitioner applied for renewal on 12th January 1993 and the licence was renewed for the period from 1.1.93 to 31 12.97. Thus on this ground also, on 11th January, 1993, the petitioner deemed to have been holding the licence. Therefore, in my view, even on this ground, it cannot be said that there was any technical breach of the Licensing Order.

5. There appears to be an error in granting renewal only upto 31.12.97. Perhaps the renewal has been valid upto 31.12.98 in view of the stand which the Department has taken.

6. In view of the aforesaid, this Special Civil Application is allowed and the order of the respondent No.2 dated 15.12.93 at Annexure F and the order of the State Government dated 1.1.96 at Annexure I are quashed and set aside. Necessary correction will also be made in the renewed licence as indicated above. Rule is made absolute accordingly.

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